

² See, e.g., comments of Sprint, p. 1; Verizon appendices; Time Warner Cable, p. 2; AT&T, p. 2.

Incumbent LECs (RBOCs in particular) have engaged in price squeezes – charging retail end user customers rates that are lower than those charged to wholesale access customers -- threatening viable competition in the retail market and minimizing the likelihood that competition in the wholesale market will develop or flourish. The failure of the current regulatory structure to address these barriers to competition is harming businesses, the economy, and the rapid roll out of additional broadband services.

Today, there are many carriers providing broadband services to business customers, offering innovative features and functions over multiple technology platforms. However, as Ad Hoc points out (p. 2), a carrier's ability to offer attractive prices to end user customers will depend to a great extent on its input costs. If inputs are priced at excessively high levels, and there are no feasible alternative suppliers for such inputs, those excessive costs are passed on to the end user customer in the form of retail rates that are higher than those that would likely be charged were the wholesale (input) market effectively competitive.

This is the crux of the problem. Access facilities – including DS1, DS3, copper loops, and Ethernet – are key inputs to the provision of broadband services, and the market for these facilities is overwhelmingly dominated by incumbent LECs.³ As commenting parties demonstrated, at least some incumbent LECs have exercised their market power by engaging in price squeeze tactics. In Sprint's real-world examples of certain Networx contracts,⁴ AT&T and Verizon were able to substantially under-bid

³ See, e.g., Sprint, p. 2; XO, p. 2; Section 271 Coalition, p. 4; Paetec, p. 2; Cbeyond et al., p. 3; California Assn. of Competitive Telecommunications Companies, p. 2.

⁴ See Sprint, pp. 3-6.

Sprint purely as a result of their access cost advantages (Verizon's access bid was *less than half* of Sprint's access bid), even though Sprint offered a more attractive port bid (the rate element associated with the interexchange network). Sprint also evaluated other Networkx bid situations in which AT&T and Verizon were the incumbent LEC, and found that on average, the AT&T and Verizon IXC's submitted access (DS1 and DS3) bids that were up to 49% (Verizon) and 27% (AT&T) below Sprint's access cost. In other words, even where Sprint's own network is more efficient than its competitors' interexchange networks, Sprint was unable to compensate for the enormous access cost advantages the AT&T and Verizon interexchange/wireless entities apparently received from their incumbent LEC sister entities.

Concern over the deleterious impact the lack of competition in the wholesale access market has on the broadband market was echoed by the Office of Advocacy, U.S. Small Business Administration ("SBA"). The lack of "availability and affordability of middle mile access for wired and wireless broadband providers [and] ...copper retirement and access to last mile facilities" constitute "significant barriers to entry into the broadband market."⁵ SBA's analysis indicated that "even where adequate middle mile facilities exist, access to middle mile infrastructure is prohibitively expensive" (*id.*), and it accordingly urged the Commission to "examine its extensive docket on special access and adopt policies that will encourage further competition and access to broadband for small businesses" (*id.*, p. 5). Sprint vigorously seconds SBA's call for action in this regard.

⁵ See SBA, pp. 3-4.

The Commission should not be swayed by assertions that reform of “legacy” facilities is somehow unnecessary.⁶ Broadband business customers are now and will continue for the foreseeable future to require “legacy” access facilities such as DS1s and DS3s to reach broadband services; access customers continue to rely heavily upon “legacy” facilities from incumbent LECs as inputs to their broadband service offerings; and “legacy” facilities account for almost all of the special access revenues earned by incumbent LECs themselves (at least, those incumbent LECs that report their special access revenues):

- Sprint’s analysis of one of its largest MPLS hubs demonstrates that the vast majority of access facilities used by its retail broadband customers have a capacity of DS3 or below.⁷ While Sprint would much prefer to self-provision or otherwise not be reliant on incumbent LECs, it is simply not feasible to duplicate the ubiquitous networks built by incumbent LECs over the past century.
- Ad Hoc’s enterprise members consider DS1 and DS3 facilities to be the “work horse of business broadband networks.” Ad Hoc further notes that a wide range of common applications (credit card transactions, inventory management at retail locations, connections from headquarter offices to branch offices, etc.) “do not require capacities above those of DS1.”⁸
- High capacity and DSL revenues account for almost 90% of NECA members’ 2010 special access revenues.⁹
- Competitive LECs emphasized their need for access to incumbent LECs’ embedded copper loops (for example, to provide broadband Ethernet over copper), DS1 transport UNEs, as well as OCn and Ethernet facilities, at just and reasonable rates, terms and conditions, in situations in which it is simply not feasible to self-provision.¹⁰

⁶ See, e.g., AT&T, p. 22 (market is moving from TDM to Ethernet-based services).

⁷ See Sprint, p. 8.

⁸ See Ad Hoc, p. 6.


⁹ See NECA, p. 8. See also, Verizon, p. 2 (acknowledging that business broadband services are provided over everything from DSL to ATM to Ethernet platforms).

¹⁰ See, e.g., California Assn. of Competitive Telecommunications Companies, p. 2; XO, p. 2; Section 271 Coalition, p. 4; Comptel, p. 3.

Given the clear on-going need for DSn and other facilities on just and reasonable rates, terms and conditions, the Commission must expeditiously reform “legacy” special access regulations. To the extent that customers and carriers increase their use of Ethernet facilities, the Commission must act to ensure that these facilities also are available on a just, reasonable and nondiscriminatory basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 4th day of November, 2010 to the parties listed below.


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